THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.3710 of 2007

Date: 05.03.2007

Between:

D.Venkata Ramana Reddy.

....Petitioner

And

Sri L.Srihari and others.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.3710 of 2007

O R D E R:

The petitioner functioned as a Secretary of Primary Agricultural Co-operative Society Limited, Rompicherla, Chittoor District. Enquiry under Section 51 of the A.P. Co-operative Societies Act, 1964 (for short 'the Act') was ordered by the Functional Registrar of the Society i.e., District Cooperative Officer. A team of officials co-ordinated by the first respondent was entrusted with the enquiry. The petitioner raised certain objections, during the course of enquiry. Ultimately, report was submitted on 20.10.2006. On the basis of the same, the second respondent issued notice, dated 17.01.2007, to the petitioner, under Section 60 of the Act. The petitioner challenges the same, on several grounds.

Sri Nandigama Krishna Rao, the learned counsel for the petitioner submits that the first respondent incurred disqualification to be part of the team of enquiry officers, inasmuch as he not only functioned as a person-in-charge but was also a member of the Society. He also submits

that various objections raised by his client, during the course of enquiry, were not taken into account, and that the report submitted, after conducting such an enquiry, cannot constitute the basis for surcharge proceedings.

Learned Government Pleader for Co-operation, on the other hand, submits that the enquiry under Section 51 of the Act is purely administrative in nature and any findings recorded in the report are, once again, to be established during the course of surcharge proceedings. He contends that the petitioner can put ward all his contentions in his reply.

The petitioner had approached this Court by filing W.P.No.2562 of 2006, when the enquiry under Section 51 of the Act was in progress. The Writ Petition was disposed of on 13.03.2006, by observing that inasmuch as the petitioner had already participated in the enquiry, he can put forward all his contentions. In other words, this Court was not inclined to interdict the enquiry. The Report, dated 20.10.2006, came to be submitted.

It is no doubt true that the result of an audit under Section 50 or enquiry under Section 51 or inspection under Section 52 of the Act would constitute the basis for initiation of surcharge proceedings. However, the findings recorded, during the course of audit or inspection or

enquiry, cannot be treated as final. The reason is that the surcharged person is not given an opportunity to cross-examine the persons, whose statements constituted the basis for the report in the said proceedings. Hence, during the course of surcharge proceedings, full-fledged opportunity needs to be given to the affected person, to disprove the allegations made against him. Therefore, the petitioner cannot be said to have suffered any detriment, on account of the defects, if any, in the report, dated 20.10.2006. He can put forward his contentions, about the allegations made against him, afresh, as though there did not exist any enquiry at all.

For the foregoing reasons, the Writ Petition is disposed of, directing that the petitioner shall be entitled to put forward all his contentions, touching upon the factual and legal aspects and the respondents shall be under obligation to establish the allegations against the petitioner independently.

Learned counsel for the petitioner submits that the respondents may be prevented from prosecuting the petitioner, till the conclusion of surcharge proceedings. It hardly needs any emphasis that the basis for prosecuting an office holder of a Society would arise, if only any irregularities are found in the course of surcharge

proceedings. There shall be no order as to costs.

05.03.2007

JSU